

E-Filed 11/16/12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SPENCER BRASURE,

No. C 12-3774 RS (PR)

Plaintiff,

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

v.

KEVIN R. CHAPPELL and
THE STATE OF CALIFORNIA;

Defendants.

INTRODUCTION

This is a federal civil rights action filed pursuant to 42 U.S.C. § 1983. The Court now reviews the complaint pursuant to 28 U.S.C. § 1915A(a).

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id.*

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§ 1915A(b)(1),(2). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

A “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55 (9th Cir. 1994). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Legal Claims


Plaintiff claims that defendants are violating his constitutional rights by withdrawing restitution fines from his accounts. Plaintiff’s allegations are entirely conclusory and do not contain any details as to the amount of such fines, when and why they were imposed (or by whom), how much is being deducted, etc. **Accordingly, the complaint is DISMISSED with leave to file an amended complaint within 30 days from the date of this order.** The amended complaint must include the caption and civil case number used in this order (12-3774 RS (PR)) and the words FIRST AMENDED COMPLAINT on the first page. Because an amended complaint *completely* replaces the previous complaints, plaintiff must include in his first amended complaint *all* the claims he wishes to present and *all* of the defendants he wishes to sue. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Any claims not raised in the first amended complaint will be deemed waived. Plaintiff may *not* incorporate material from the prior complaint by reference. Failure to file an amended

1 complaint in accordance with this order will result in dismissal of this action without further
2 notice to plaintiff.

3 It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
4 informed of any change of address by filing a separate paper with the clerk headed "Notice
5 of Change of Address." He must comply with the Court's orders in a timely fashion or ask
6 for an extension of time to do so. Failure to comply may result in the dismissal of this
7 action pursuant to Federal Rule of Civil Procedure 41(b). The Clerk shall terminate Docket
8 Nos. 2 and 4.

9 **IT IS SO ORDERED.**

10 DATED: November 16, 2012


11 RICHARD SEEBORG
12 United States District Judge
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United States District Court
For the Northern District of California